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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER
WATCH,

Plaintiff,

v.
CALIFORNIA DEPARTMENT OF FISH &
GAME, et al.,

Defendants.

No. C 06-06685 CRB

**ORDER GRANTING MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Now pending before the Court are (1) plaintiff's motion for leave to file an amended complaint, and (2) defendant Cotter Health Center Inc.'s motion to advance the hearing date of its motion to dismiss, and (3) various defendants' motions to dismiss.

Under Federal Rule of Civil Procedure 15(a) a party may amend his complaint once as a matter of course at any time before a responsive pleading is served. None of the defendants has answered the complaint; instead, they have filed motions to dismiss. In the Ninth Circuit a motion to dismiss is not considered a "responsive" pleading. See Miles v. Dep't of Army, 881 f.2d 777, 781 (9th Cir. 1989). Thus, plaintiff does not require leave of court to file its First Amended Complaint; plaintiff may file it as of right. Accordingly, the Court will dismiss plaintiff's motion for leave as moot.

1 Defendant Cotter's motion to advance the hearing date is GRANTED; however, the
2 parties shall meet and confer as to whether the pending motions to dismiss are moot, or must
3 be modified, in light of the amendment of the complaint and shall advise the Court
4 accordingly. If the motions must be modified to address the amended complaint, the motions
5 to dismiss shall be re-noticed for hearing in accordance with the Local Rules.

6 **IT IS SO ORDERED.**

7
8 Dated: January 31, 20097



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE